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IN THE
SUPREME COURT OF THE UNITED STATES

MRS. ROBERT LEE TURMAN and
CULLEN B. GOSNELL
Appellants

vs.

J. LON DUCKWORTH, as Chairman Georgia State Democratic Executive Committee;

MISS GRACE CANNINGTON, as Secretary Georgia State Democratic Executive Committee;

THE STATE DEMOCRATIC EXECUTIVE COMMITTEE OF THE STATE OF GEOGIA, an unincorporated association; and

BEN W. FORTSON, JR., as Secretary of State of Georgia
Appellees

Number 532

October Term 1946

BRIEF OF APPELLANTS IN OPPOSITION TO APPELLEES' MOTION TO DISMISS OR AFFIRM

Now come the Appellants, pursuant to Rule 12 and Rule 7 of the Supreme Court of the United States, within twenty days after service upon Appellants of Appellees' Statement of Matters Making Against the Jurisdiction of the Supreme Court of the United States and Motion to Dismiss or Affirm, and file this, Appellants' Brief in Opposition to Appellees' Statement and Motion, and show:

I.

INTRODUCTORY STATEMENT

Only on account of the possibility of a decision being made upon Appellees' Motion before briefs are received in the Court on the merits of the case, advantage is being taken of the provisions of the rule allowing Brief in Opposition to the Motion.

While it seems unthinkable that the serious and substantial constitutional questions raised in the case would be summarily disposed of, as a matter of cautious concern and in advance of full briefs on the subject, we respectfully call the Court's attention to certain matters pertinent to jurisdiction.

Brief reference to some of the more important cases is hereafter made, but obviously an exhaustive treatment of the subject can not be made in advance of filing full briefs on the merits of the case, now in course of preparation but not yet ready for filing in this Court.

For the convenience of the Court we attach hereto as Appendix A a copy of the Complaint and amendment thereof (omitting verification) which is consolidated into one instrument.

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II.

A SUBSTANTIAL FEDERAL QUESTION IS INVOLVED

The right to vote in any election by the people in Georgia for Governor and other State house officers is conferred by the State Constitution but as so conferred such right is not qualified so as to permit a difference in valuation between an individual's vote in one sub-area and another sub-area in a State-wide election or primary. By a State statute, i.e. the county unit law now under attack, there is State action grossly and purposely discriminatory in the evaluation of petitioners' votes after the same have been initially cast. When a State statute so deprives a citizen of the United States of his rightful evaluation of the vote which he has cast there arises a substantial federal question under the equal protection clause of the 14th Amendment of the Constitution of the United States.

The cases cited by Appellees, on their asserted point that because the right to vote in a State election is not federally conferred no substantial federal question is involved, Minor v. Happersett, 21 Wall. 162,22 L. Ed. 627; Ex parte Yarborough, 110 U. S. 651, 4 S. Ct. 152, 28 L. Ed. 274; McPherson v. Blacker, 146 U. S. 1, 13 S. Ct. 3, 36 L. Ed. 869; Guinn v. United States, 238 U. S. 347, 35 S. Ct. 926, 59 L. Ed. 1340; Breedlove v. Suttles, 302 U. S. 277, 58 S. Ct. 205, 82 L. Ed. 252, do not comprehend the situation or facts of the present case. The further rule is applicable and pertinent to-wit: "provided, of course, no discrimination is made between individuals, in violation of the Federal Constitution."

> *Pope v. Williams*
> 193 U. S. 621, 24 S. Ct. 573, 575
> 48 L. Ed. 817

In the present case the discrimination has been made between individuals, by State statute, in violation of the equal protection clause of the 14th Amendment to the Federal Constitution.

Nixon v. Herndon,
273 U. S. 536, 47 S. Ct. 446, 71 L. Ed. 759;
U. S. v. Classic,
313 U. S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368;
Snowdon v. Hughes,
321 U. S. 1, 64 S. Ct. 397, 88 L. Ed. 497;
Ex parte Siebold,
100 U. S. 371, 25 L. Ed. 717;
Wiley v. Sinkler,
179 U. S. 58, 21 S. Ct. 17, 45 L. Ed. 84

The doctrine with reference to protection and enforcement of rights arising under the Constitution and laws of the United States discussed in Appellees' Motion applies only to the privilege and immunities clause of the 14th Amendment (also to the 15th Amendment), not to the equal protection clause. For instance, it is noted that in the recovery allowed in Nixon v. Herndon, supra, it was commented that it was unnecessary to consider the 15th Amendment "because it seems to us hard to imagine a more direct and obvious infringement of the 14th." A federally derived right is different from a federally protected right. The equal protection clause of the 14th Amendment is not dependent upon the right (protection of which is denied by State action) being a right granted by the laws of Constitution of the United States. "The laws" which must be administered equally are State laws — with Federal protection against discrimination.

Bell v. Hood,
Page 774, Headnote 6 of 66 S. Ct.

The right to have one's vote counted (even though the right to vote is derived from the State) is as open to protection (under the equal protection clause of the 14th Amendment to the Federal Constitution) as the right to put a ballot in the box under a voting privilege conferred by the Constitution or laws of the United States.

U. S. v. Moseley,
238 U. S. 383, 35 S. Ct. 904, 50 L. Ed. 1455.

In dealing with an attack on a similar statute depreciating by counties the value of individual votes, the Supreme

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Court of Tennessee found no difficulty in striking it down as violative of the equal protection clause of the "State" and "Federal" Constitutions. Where in Gates v. Long, 172 Tenn. 471, 113 S. W. 2d 388, 391, the Court stated:

> "Under equal protection clauses of State (Tennessee) and Federal Constitutions, the State cannot confer upon one class of voter the right to vote in primary elections of their party and deprive another class of the right unless discrimination can be justified on some rational basis. . . . . The State may not without reason abridge the right of voter to vote in primary election of their party in one class of voters and leave the right whole in another class."

III.

THE COMPLAINT, WHILE CONCERNING POLITICAL ACTION, SOUGHT PROTECTION FROM PRIVATE WRONGS TO APPELLANTS AND THE CLASS THEY REPRESENT.

Appellees contend that the questions involved in this case are purely political questions and that equity is without jurisdiction to enforce a purely political right. It is submitted that the traditional doctrine that equity will not ordinarily interfere with purely political matters has no application in the case at bar.

This action is not merely to rid the State of an evil and invalid electoral system, but is one that seeks to strike down a statute plainly and deliberately discriminating against appellants. Appellants are not complaining that Fulton, or DeKalb County, has only six unit votes, but rather that appellants, as individual voters, have only a fractional part of the voting effectiveness of other voters in the voting area (statewide). The system of giving effect to county lines in evaluating votes is highly discriminatory in that the Constitution of Georgia gave to each voter the same right. The particular number of votes any county has is merely illustrative of the extent of the discrimination caused by the county unit system.

It makes no difference that the subject matter of this controversy involves political rights. If the appellants had been wholly denied the right to cast their ballots, they could maintain an action in the Federal Court for damages.

> "The objection that the subject matter of the suit is political is little more than a play upon words. Of course the petition concerns political action but it alleges and seeks to recover for private damages and that private damage may be caused by such political action and may be recovered for in a suit at law concurrently has not been doubted for over 200 years."

Nixon v. Herndon,
273 U. S. 536, 47 S. Ct. 446, 71 L. Ed. 759.

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"Where discrimination is sufficiently shown, the right to relief under the equal protection clause is not diminished by the fact that the discrimination relates to political rights."

Snowden v. Hughes,
321 U. S. 1, 64 S. Ct. 397, 88 L. Ed. 497.

See also:

Smith v. Allwright,
321 U. S. 649, 64 S. Ct. 757, 88 L. Ed. 891;
Nixon v. Condon,
286 U. S. 73, 52 S. Ct. 484, 76 L. Ed. 984;
Lane v. Wilson,
307 U. S. 268, 59 S. Ct. 872, 83 L. Ed. 1281;
Wiley v. Sinkler,
179 U. S. 58, 21 S. Ct. 17, 45 L. Ed. 84.

It is also clear that the criminal courts will act in appropriate cases of fraud in elections.

Ex parte Yarbrough,
110 U. S. 651, 4 S. Ct. 152, 28 L. Ed. 274;
Ex parte Siebold,
100 U. S. 371, 25 L. Ed. 717.

Equity like the courts of law will act to protect from injury and redress a wrong. The only points in question in the exercise of such jurisdiction are the existence of adequacy of another remedy at law and the propriety of exercising such jurisdiction. In political matters the propriety of exercising jurisdiction applies with especial emphasis, because of the extreme importance of the elective process in our government. However, when the right is clear, the threatened evil is great, and the result unattainable by other remedies, equity should assume jurisdiction as a matter of right.

See: LONG, "Equitable Jurisdiction to Protect Person Rights." (1923) 33 Yale L. J. 115.

Appellants are entitled in this case to the protection of an injunction. Such relief will not invade the exclusive functions of any court of law, or other branch of our govern-

ments, either State or Federal, and would require no supervision by this Court of any complicated state election machinery.

The appellants' prayers for relief in equity are based upon a definite legal right and not merely upon privilege.

In the case of Attorney General v. Suffolk County Commissioners, 224 Mass. 598, 113 N.E. 581, the Court in discussing the right to vote said:

> "The right to vote is a fundamental personal political right. Unlawful interference with the right to vote, whether on the part of public officers or private persons, is a private wrong for which the law affords a remedy although it might have significant political results. Any act of the Legislative limiting or in any way interfering with this right would be invalid. While the right to vote for members of the Legislature is in a sense a political right, it is also a precious personal right ..... The circumstances that political consideration might be connected with rights affords no justification to courts for refusing to adjudicate causes rightfully pending before them. Such a controversy, even though political in many of its aspects, is of judicial cognizance ..... There can be no equality among citizens if the vote of one county have considerably more than that of another in electing public officers."

Appellants have the undoubted right to vote on an equality with other voters. They have with equal certainty been denied this right by statute which has so diluted their votes as to render them almost worthless. They are entitled to invoke the equal protection clause of the Fourteenth Amendment. To say the Federal Court will not intervene and use its equitable powers to protect such a right would be to admit the guaranty of the Fourteenth Amendment is not operative.

There is no political tribunal in Georgia for the correction of this injury.

The District Judges in their opinion in this case below stated:

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"But the remedy for these exceptional situations is to be sought through changes in the law, rather than by appeal to courts of equity to upset the law as unconstitutional because of a hardship that has arisen."

It is no answer to appellants to say they may seek their remedy in the legislature of Georgia. The very noose which they now find about them would confront them there and make any appeal there unavailing.

The remedies available at law are inadequate.

Appellants could not sue for nor measure their damages. As pointed out hereinabove, the State of Georgia has no equal protection clause in its Constitution. Further, no remedy in the nature of a mandamus proceeding is available in the Federal Courts in a case of this character.

Creager v. Bryan,
287 Ftd. 362;

Hughes, "Federal Practice" (1931) Para. 268.

Mr. Justice Black, in his dissenting opinion in the case of Colegrove vs. Green, 66 S. Ct. 1198, advance sheet of July 1, 1946, aptly stated:

"Under these circumstances, and since there is no adequate remedy for depriving a citizen of his right to vote, equity can and should grant relief."

Appellants instituted this action at the proper time.

The District Court Judges further stated in their opinion:

"A better case for interfering with the application of the unit rule by the Democratic Executive Committee would have been presented if the Plaintiffs had promptly moved to assert its constitutional invalidity and to stop its application when the executive committee, which had the right to determine whether a primary or a convention should be held for nominations, did call the Primary of July 17th, and published the rules under which it should be conducted, including expressly the county unit rule."

It is submitted that any such action by Appellants as suggested by the Court below would have been prematurely asking for an adjudication of an abstract question, it being impossible to predict the result of the Primary election. Further, it would have been an unquestioned effort to involve the Federal Court in a matter of supervision of party politics in Georgia.

Giles v. Harris,
189 U. S. 475, 23 S. Ct. 639, 47 L. Ed. 909.

The moment this suit was brought was the only time, and this action the only way, appellants could lay hands on the tangible means of protecting their rights. There still remains time for this Court to prevent this wrong against the appellants from being consummated.

In support of their contention that equity is without jurisdiction to enforce a purely political right appellees have cited the following cases, which, however, are readily distinguishable from the case at bar and establish no precedent for a denial of equitable relief in this case:

In re: *Sawyer* (124 U. S. 200, 8 S. Ct. 482, 31 Law Ed. 402). Equitable relief denied, an adequate remedy at law was available.

Walton v. House of Representatives (265 U. S. 487, 44 S. Ct. 628, 68 L. Ed. 1116). Equitable relief denied, an adequate remedy at law was available.

Taylor vs. Beckham (178 U. S. 548, 20 S. Ct. 890, 44 L. Ed. 1187). It was held inappropriate for the Federal Court to go beyond its sphere of action and interfere with the decision of the Supreme Court of Kentucky sustaining a determination of an election contest made by the General Assembly under the authority of the State Constitution.

Giles v. Harris, supra. Court of equity is not prepared to supervise the voting in Alabama.

Lane v. Wilson (307 U. S. 268, 59 S. Ct. 872, 83 L. Ed. 1281). This was a case where an appropriate action at law for damages was brought to enforce the Fifteenth Amendment.

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Colegrove v. Green, supra. Intervention by a Federal Court would be an unreasonable interference with the authority of the State legislature and the Congress of the United States.

No case has been found exclusively decided upon the ground that equity will not protect personal or political rights. The sole point in question is the existence or adequacy of another remedy provided by law. Nor has there been found any instance where it has been judicially determined by this Court that equity would refuse relief to individaul citizens in an appropriate case upon unwarranted interference or discrimination in their enjoyment of the right of franchise.

To follow appellees in their contentions in this case would be to ignore the principles of logic and justice. Public policy does not sanction a doctrine which disregards personal and political rights, the creatures of social progress and civilization.

IV.

RELIEF MAY BE EFFECTIVELY GRANTED

(a) By declaring the Statute under attack unconstitutional.

(b) By approving injunctive relief against the Secretary of State.

The case as filed sought to prevent the placing of the name of the candidate for Governor, nominated by the method claimed to be illegal, on ballots for the election to be held on November 5th, 1946. The Complaint was filed four days before this action was taken by one of the defendants, the Secretary of State. This action by him was after jurisdiction had been taken by the District Court and any acts done by the defendant in the meantime were subject to final decree in the case. The power of the Court attached as of the date the suit was allowed to be filed. Acts taken thereafter by defendants are within control of the Court and subject to subsequent decree holding them illegal and ineffective. At the time of the hearing by the three-Judge Court, ballots containing the name of the person so nominated had been furnished to the County authorities for the conduct of the election. But it was shown by amendment that the time had also elapsed by law for the filing of any other candidate or the placing of any other name on the ballot and it was shown that but for the particular provision of the statute under attack, the name of this candidate would not have been placed on the ballots as the nominee. It was shown that if the votes of Plaintiffs, and others similarly situated, had been counted on an equal basis with other votes in the State, the name of another candidate would have been placed on the ballot as the nominee since the other candidate received the highest number of votes, a plurality, or else that no nominee was chosen since no one received a majority. But is was also shown at the time of the hearing that the election process in the case of a candidate for Governor is not over with the balloting in the General Election to be held on November 5th, 1946, since

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under a provision of the State Constitution* the Secretary of State, after the holding of the election, is required to hold the ballots showing the result of voting and to transmit them to the President of the Senate when the General Assembly convenes (on January 13th, 1947). All of this, of course, contemplates a lawful election with the name of a lawful nominee or candidate on the ballot. Therefore, since after the filing of the Plaintiffs' Petition and before the hearing by the three-Judge Court, the time had expired by law for the name of any other candidate to be placed on the election ballots, Plaintiffs prayed for injunction against the Secretary of State to prevent him from transmitting the voting results showing the name of a candidate so illegally nominated and chosen. Since such candidate was illegally nominated, the election in which the ballots contained only the name of the illegal nominee could not be a valid election, out of which the normal duty of the Secretary of State to transmit the result could arise. Had the unconstitutionl statute been ignored as it should have been, there was no Democratic candidate nominated because no one had a majority of popular votes. Injunction against such an act would be appropriate because such action would amount to but another step in the consummation of the illegal process begun under the discriminatory statute complained of. Whether on the merits

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*Article V, Section I, Paragraph III of the Constitution of Georgia, provides:

"The returns for every election of Governor shall be sealed up by the managers, separately from other returns, and directed to the President of the Senate and Speaker of the House of epresentatives, and transmitted to the Secretary of State, who shall, without opening said returns, cause the same to be laid before the Senate on the day after the two houses shall have been organized, and they shall be transmitted by the Senate to the House of Representatives."

Article V, Section I, Paragraph IV of the Constitution of Georgia, provides in substance that the General Assembly shall convene and open and publish the returns of the election and that the person receiving the majority of the whole number of votes shall be declared duly elected Governor.

of the question Plaintiffs were entitled to the injunctive relief prayed for, is a question to be determined upon a full consideration of the case, but if they were entitled to it, certainly it could be granted and the question could not become moot prior to January 13, 1947. Also, whether on the merits the relief sought is in reality against the State in the sense in which the State is the party to the suit to be sued, only with its consent, is a matter which this Court would determine—in the exercise of the jurisdiction over the controversy — after full hearing. This relief against the Secretary of State was incidental to the main relief prayed for, to-wit: the striking down the statute which abridged Plaintiffs' right to vote. There was no affirmative relief or recovery sought against the State. Two of its citizens, for themselves and others in their class, simply invoked the protection of the United States Constitution against the discriminating provision of an Act of its General Assembly; the wrong to them is not yet complete, it is still in process; they seek to stop it before it is consummated.

Where state officials, purporting to act under state authority, invade rights secured by the Federal Constitution, they are subject to the process of the Federal Courts in order that the persons injured may have appropriate relief. In such a case the suit is not against the State within the meaning of the State's immunity from suit.

Sterling v. Constantin,
287 U. S. 378, 53 S. Ct. 190, 193, 77 L. Ed. 375;
Ex parte Young,
209 U. S. 123, 28 S. Ct. 441, 442, 449, 450, 451,
52 L. Ed. 714;
Smyth v. Ames,
169 U. S. 466, 18 S. Ct. 418, 42 L. Ed. 819.

Although a state may not be sued without its consent, nevertheless a State Officer acting under color of his official authority may be enjoined from carrying into effect a State law asserted to be repugnant to the Constitution of the United States, even though such injunction may cause the State law to remain inoperative until the constitutional question is judicially determined.

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Public Serv. Co. v. Corboy,
250 U. S. 153, 39 S. Ct. 440, 63 L. Ed. 905.

From Ex parte Young, supra, at page 453, the following statement is authority for the position that the Secretary of State may be enjoined, even though the particular duty to be performed is imposed by the provision of some other act (in this case by the Constitutional provision shown in the footnote referred to above):

> "In making an officer of the state a party defendant in a suit to enjoin the enforcement of an act alleged to be unconstitutional, it is plain that such officer must have some connection with the enforcement of the act, or else it is merely making him a party as a representative of the state, and thereby attempting to make the state a party.
>
> "It has not, however, been held that it was necessary that such duty should be declared in the same act which is to be enforced. In some cases, it is true, the duty of enforcement has been so imposed (154 U. S. 362, 366 Sec. 19 of the act) but that may possibly make the duty more clear; if it otherwise exists it is equally efficacious. The fact that the state officer, by virtue of his office, has some connection with the enforcement of the act, is the important and material fact, and whether it arises out of the general law, or is specially created by the act itself, is not material so long as it exists."

Besides the prayer for injunctive relief against the Secretary of State as to acts not yet performed and the prayer for decree as to acts already performed, the Petitioners sought declaratory judgment and that the discriminatory provisions of the statute be declared and adjudicated unconstitutional as violative of the equal protection clause of the 14th Amendment to the United States Constitution. In any event, it could not be doubted that at the time the Petition was allowed filed there was an equitable question that had not become moot and the right to declaratory judgment is based on equity at the date of filing.

Equtable jurisdiction must be determined by the conditions existing at the time the bill is filed and not by conditions which come into existence after the commencement of the suit.

Busch v. Jones,
184 U. S. 598, 46 L. Ed. 707, 22 S. Ct. 511;
North Chicago Rolling Mill Co. v. St. Louis Ore & Steel Co.,
152 U. S. 596, 38 L. Ed. 565, 14 S. Ct. 710.

Acts violative of petitioners' constitutional rights performed by the Secretary of the State of Georgia subsequent to the filing of the petition in this case therefore cannot affect the jurisdiction of the Federal Courts to award such relief as is proper upon a hearing on the merits. The United States Supreme Court in the exercise of its appellate jurisdiction, has power, not only to correct errors of judgment under review, but to make such other disposition of the case as justice requires.

Honeyman v. Hanan,
300 U. S. 14, 57 S. Ct. 350, 81 L. Ed. 476;
State of Minnesota v. National Tea Co.
309 U. S. 551, 60 S. Ct. 676, 84 L. Ed. 920.

Contention is made in Appellees' Motion that the Complaint seeks by injunction against the Secretary of State, in purpose and effect, to control the action of the General Assembly of Georgia. It does not. What the Legislature will do when it finds there are no election returns transmitted to it will be for it in its full competence to decide. We have not sought to control its action and this but emphasizes that the question does not become moot until that time.

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V.

PRELIMINARY INQUIRY SHOULD BE LIMITED TO THE JURISDICTION OF THIS COURT ON APPEAL. QUESTIONS OF EQUITABLE JURISDICTION TO GRANT RELIEF GO TO THE MERITS OF THE CASE.

Decision of so important and substantial a question, regardless of ultimate disposition, should not, we respectfully submit, be made upon a mere preliminary examination to ascertain this Court's jurisdiction and in advance of full consideration on the merits of the case. The Complaint attacked a statute as being violative of the "equal protection of the laws" clause of the 14th Amendment to the United States Constitution. It can not be argued that the attack made or the question raised by it is frivolous. The Complaint sought injunctive relief against State and party officials and was heard by a three-Judge Court, appeal being allowed as a matter of right, all in accordance with statute. So the only jurisdictional question that can arise at this time is one that would be determinative of the whole controversy. The order appealed from denies an injunction "because of —— the conclusion of law filed herewith." One of the "conclusions of law" was that the statute of 1917 under attack was not unconstitutional. Therefore, to dismiss the appeal would in effect sustain the constitutionality of the county unit law. To affirm it would have the same effect. The question is one of too much public interest (with such far reaching possibilities of establishing a basis of future discrimination by legislatures in states in which the state constitution omits an equal protection clause) to be disposed of without a full hearing and argument.

Jurisdiction is not defeated by the possibility that the averments might possibly fail to state a cause of action on which petitioners could actually recover. For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction. Whether the complaint states a cause of action on which relief could be granted is a question of law and just as issues of fact it must be decided after and not before

the Court has assumed jurisdiction over the controversy. If the Court does later exercise its jurisdiction to determine that the allegations in the complaint do not state a ground for relief, then dismissal of the case would be on the merits, not for want of jurisdiction.

Bell v. Hood,
No. 344, decided April 1, 1946.
.....U. S....., 66 S. Ct. 773,.....L. Ed.....;
Swafford v. Templeton,
185 U. S. 487, 493, 494, 22 S. Ct. 783, 785, 786,
46 L. Ed. 1005;
Binderup v. Pathe Exchange,
263 U. S. 291, 305-308, 44 S. Ct. 96-98-99,
68 L. Ed. 308.

The previously carved out exceptions to the foregoing are that a suit may sometimes be dismissed for want of jurisdiction where the alleged claim under the Constitution or federal statutes clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous. The accuracy of calling these dismissals jurisdictional has been questioned.

Bell v. Hood, supra;
The Fair v. Kohler Die & Specialty Co.,
228 U. S. 22, 33 S. Ct. 410, 411, 57 L. Ed. 716.

Respectfully submitted,

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APPENDIX "A"

DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

MRS. ROBERT LEE TURMAN
CULLEN B. GOSNELL
Plaintiffs
v.
J. LON DUCKWORTH,
as Chairman of the Georgia State Democratic Executive Committee;
MISS GRACE CANNINGTON,
as Secretary of the Georgia State Democratic Executive Committee;
THE STATE DEMOCRATIC EXECUTIVE COMMITTEE OF THE STATE OF GEORGIA,
an unincorporated association; and
BEN W. FORTSON, JR.,
as Secretary of the State of Georgia; Defendants;

CIVIL ACTION
Number 3013

CONSOLIDATED COMPLAINT AND AMENDMENT

TO THE HONORABLE, THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA:

1. The plaintiff, Mrs. Robert Lee Turman, is a resident of Fulton County, State of Georgia, and the plaintiff, Cullen B. Gosnell, is a resident of DeKalb County, State of Georgia, and said plaintiffs in their own behalf and on behalf of all other persons similarly situated bring this action against

the defendants hereinafter named for injunction and other relief as will more fully appear hereinafter.

2. This action arises under the 14th Amendment to the Constitution of the United States, Section I; Section 24 (14) of the Judicial Code, USCA, Title 28, Sec. 41, subd. 14; and Civil Rights Act, USCA, Title 8, Sec. 42, 2 FCA, Title 8, Sec. 43. Plaintiffs as citizens and registered voters of the State of Georgia are given by the Constitution of said State, the right to vote in all general elections for Governor and other State officials, who under said Constitution are required to be elected in a statewide election by a majority of votes cast. The legislature of said state in 1917 set up a system of nominations for Governor and other State officials by party primaries, as a part of the State election system, and required the result of such primary elections to be determined by a County unit plan which deprived these plaintiffs of equal protection of their right to have their votes as residents of more populous counties effective on the same or approximate basis as residents of counties with far less population. Plaintiffs have no adequate remedy except in equity because damage is irreparable and not compensable in money.

3. Each of the plaintiffs is a citizen of the United States and of the State of Georgia and a duly registered and qualified voter for the year 1946 in the county of his residence as above set out and is entitled to vote in all elections, including primaries, held in said State and to have his vote counted as of equal value with that of any other voter in the State. Plaintiffs did vote in the Democratic primary held July 17, 1946, and both of them cast their votes in said primary for the candidate for Governor of Georgia who obtained the plurality of all votes cast in said primary but did not obtain the plurality of the county unit votes, by which the Act of 1917 requires the result of said primary to be determined.

4. Defendant, J. Lon Duckworth, is Chairman of the Georgia State Democratic Executive Commitee and a resident of DeKalb County, Georgia, which County is in the Northern District of the Federal Courts of the State of Georgia.

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Defendant, Miss Grace Cannington, is Secretary of the State Democratic Executive Committee and a resident of Seminole County, Georgia, which County is in the Middle District of the Federal Courts of the State of Georgia.

Defendant, The Democratic Executive Committee of the State of Georgia, is an unincorporated association and may be sued in its common name for the purpose of enforcing against it a substantive right existing in plaintiffs under the Constitution of the United States, and upon which service may be perfected by serving J. Lon Duckworth, Chairman of said Committee.

5. Defendant, Ben W. Fortson, Jr., is the duly appointed, qualified, and acting Secretary of the State of Georgia, who is a citizen and resident of the County of Wilkes, and State of Georgia; within the jurisdiction of the United States District Court for the Southern District of Georgia, Augusta Division; Sec. 40-503 of the Code of Georgia of 1933, provides that the Secretary of State shall "reside at the capital" (which is Atlanta, Fulton County, Georgia), and the said Fortson also resides at said capital, which is within the jurisdiction of the United States District Court for the Northern District of Georgia, Atlanta Division.

6. The Democratic primary held throughout Georgia on July 17, 1946, was held under and pursuant to the Statute passed by the Legislature and approved by the Governor August 14, 1917, known as the act for Nomination by County Units; as modified or amended by an Act of the General Assembly of Georgia approved January 7, 1944 (Ga. Laws 1944, ex. sess. pp. 2-8), known as the Soldier's Voting Law, and likewise amended by an Act of the General Assembly of Georgia approved March 20, 1943 (Ga. Laws 1943, pages 347-348); and as further modified by an Act of the General Assembly of Georgia, approved February 1, 1946 (Ga. Laws 1946, p._____), known as Act No. 632 relating to duties of the Secretary of State. Plaintiffs attach hereto as Exhibit "A' the pertinent portions of said Acts of the General Assembly of Georgia and pray that the same may be considered as part of this complaint with leave of full reference thereto.

7. Plaintiffs allege that the vital provisions of said law which deprive plaintiffs of the full and fair value of their votes as compared with other votes are as follows:

Georgia Code of 1933, Sertion 34-3212, codified from Georgia Laws 1917, pp. 183-189, provides: (in part)

". . . . . Candidates for nominations to the above named offices who receive, respectively, the highest number of popular votes in any given county shall be considered to have carried such county, and shall be entitled to the full vote of such county on the county unit basis, that is to say, two votes for each representative to which such county is entitled in the lower House of the General Assembly. If in any county any two or more candidates shall tie for the highest number of popular votes received, the county unit vote of such county shall be equally divided between the candidates so tying. All such county unit votes shall within 10 days after such primary be accurately consolidated by the chairman and secretary of the State Committee of the political party holding such primary, and published in a newspaper published at the Capitol, within three days after the completion of the consolidation, certified under the hands and seals of said chairman and secretary; and the candidates for said offices, respectively, who shall receive a majority of all the county unit votes, throughout the entire state, upon the basis above set forth, shall be declared by the State convention of the party holding such primary, or the permanent chairman thereof, or other party authority, without the necessity of a formal ballot, to be the nominees of such party for the above-named offices, respectively, and it shall be the duty of the State executive committee elected or appointed at such convention, or by its authority, or the chairman or secretary thereof, or other authority of such party, to see to it that the names of all such successful candidates shall be placed upon the tickets or ballots of such party at the general election following such primary, and such successful candidates shall be considered, deemed and held as the duly nominated candidates of such party for the offces named: . . . . ."

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Georgia Annotated Code, Supplement, Section 34-3215a, taken from Georgia Laws 1943, pp. 347-348, provides:

"Immediately after the consolidation of the votes in any such primary election a certificate, showing the names of such candidates and the offices for which they are candidates shall be filed in the office of the Secretary of State of this State; such certificate to be signed by the chairman and secretary of the State Committee of the political party holding such primary. Said certificate shall show by counties the total number of popular votes and the county unit votes received by each candidate in any such primary election. (Acts 1943, p. 347)."

8. The provisions of the Act of the General Assembly of Georgia of 1917, above quoted are contrary to that clause of the 14th Amendment of the Constitution of the United States which reads: ". . . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . . . . ; nor deny to any person within its jurisdiction the equal protection of the laws."

9. The provision quoted from the Act of 1917 is a deliberate, express, and unreasonable discrimination in varying degrees against all voters residing in any but the smallest counties, said discrimination as to registered voters residing in Fulton County depreciating their votes to such an extent that it requires 106 plus votes in Fulton County to have the same value as one vote in Chattahoochee County. So also it requires 71 votes in Fulton County to have the same value as 1 vote in Quitman County. Under the provisions of the Constitution of Georgia plaintiffs are entitled to cast their ballots in elections held for the office of Governor, and as they allege, to have the same counted without depreciation. Since under the statutes as herein shown the primaries held for nomination of candidates for Governor are made an integral part of the election machinery of the State, said provisions of the Constitution likewise extend to such primaries; and, therefore, the provisions of the Act of 1917 herein complained of violate plaintiffs' rights as alleged in paragraph 8 of the petition.

10. The Constitution of the State of Georgia as amended in 1945 contains the following provisions as to the election of Governor:

"*Election for Governor.* The first election for Governor, under this Constitution, shall be held on Tuesday after the first Monday in November of 1946, and the Governor-elect shall be installed in office at the next session of the General Assembly. An election shall take place quadrennially thereafter, on said date, until another date be fixed by the General Assembly. Said election shall be held at the places of holding general elections in the several counties of this State, in the manner prescribed for the election of members of the General Assembly, and the electors shall be the same."

Article V, Section I, Para. II

"*Returns of elections.* The returns for every election of Governor shall be sealed up by the managers, separately from other returns, and directed to the President of the Senate and Speaker of the House of Representatives, and transmitted to the Secretary of State, who shall, without opening said returns, cause the same to be laid before the Senate on the day after the two houses shall have been organized, and they shall be transmitted by the Senate to the House of Representatives."

Article V, Section I, Para. III

"*How returns published.* The members of each branch of the General Assembly shall convene in the Representative Hall, and the President of the Senate and Speaker of the House of Representatives shall open and publish the returns in the presence and under the direction of the General Assembly; and the person having the majority of the whole number of votes, shall be declared duly elected Governor of this State; but, if no person shall have such majority, then from the two persons having the highest number of votes, who shall be in life, and shall not decline an election at the time appointed for the General Assembly to elect, the General Assembly shall immediately, elect a Governor viva voce; and in all cases of election of a Governor by the General Assembly,

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a majority of the members present shall be necessary to a choice.

Article V, Section I, Para. IV

11. As illustrating the discrimination against the voters of the more populous counties plaintiffs show that Fulton County, in which one of the plaintiffs resides, did in the Democratic primary of July 17, 1946 cast 84,550 votes; that DeKalb County, in which another of the plaintiffs resides, did in the Democratic primary of July 17, 1946 cast 26,770 votes; that Chattahoochee County, one of the counties of said State, cast only 265 votes and that under the said Primary Act above set forth Fulton County has only six unit votes and Chatttahoochee County has two unit votes, thus making the vote of one person in Chattahoochee County equal to 106 plus votes in Fulton County and 33 plus votes in DeKalb County. Attached hereto as Exhibit "B", there is set out a table showing the complete vote for Governor in said primary of July 17, 1946.

12. Plaintiffs allege that it is the intention of defendants, J. Lon Duckworth, as Chairman of State Democratic Executive Committee, and Miss Grace Cannington, as Secretary of the State Democratic Executive Committee, to file immediately with the Secretary of State the certificate required by the Act of the General Assembly of Georgia of 1943, quoted above, and that the Secretary of State of Georgia will receive and file said certificate, and they will do so unless enjoined by this coutt.

13. Plaintiffs allege that if said certificate is filed with the Secretary of the State of Georgia, he will, unless enjoined by this court, take further steps under the established practice and the laws of Georgia towards effectuating the placing of names of those candidates for Governor and other State officials, as shown by said certificate as the nominees of the Democratic party on the official ballot as the nominees of the Democratic party for the General Election in 1946 and that said candidates would be elected in the November General Election without having been nominated by the votes of the majority of the Democratic voters of the State.

14. Plaintiffs allege that any rule adopted by the Democratic party based upon the illegal and unconstitutional County Unit rule, declaring the result of said primary election, or setting up rights in any candidate having a majority of unit votes, is itself illegal, null and void, and The Democratic Executive Committee, the Chairman and Secretary of said Committee should be enjoined from recognizing or enforcing said illegal rule.

15. Plaintiffs allege that since the filing of the original complaint (in this action) the time has expired within which candiates may, under the laws of Georgia, qualify to be voted on in the general election to be held on November 5th, 1946, and therefore the only name which will be submitted to the voters as a candidate for Governor in said election under the law now being enforced is that of the candidate who in the primary of July 17th, 1946 received the highest county unit vote but who did not receive the highest popular vote, and who being as herein alleged illegally nominated, can not become lawfully elected. Hence, the prayers hereinafter set out.

WHEREFORE, plaintiffs pray that this bill be allowed to be filed and process and summons issue, and that the defendants be required to answer petitioners' complaint.

Petitioners further pray that a three-judge court be convened as speedily as convenient and that said court consider this petition and declare the county unit rule of counting votes (as provided in the statute above referred to) in the said late Democratic primary unconstitutional, null and void, and issue restraining orders or injunctions directed to the Chairman and Secretary of the State Democratic Committee, and the State Democratic Executive Committee, the defendants above named, enjoining them from complying with said illegal rule, or any rule of the State Democratic Party based thereon, in any way.

Petitioners further pray that The Democratic Executive Committee of the State of Georgia, the Chairman and the Secretary of said Democratic Executive Committee, be restrained and enjoined from declaring the person receiving the highest county unit votes to be the candidate of the Party;

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or from recognizing him as such; or from seating or recognizing any delegates to the Party convention, to be held on October 12, 1946 named by such candidate; or from taking any steps whatsoever to place the name of said candidate on the official ballot.

Petitioners further pray that the Secretary of the State of Georgia, an above mentioned defendant, be restrained or enjoined from taking any steps towards effectuating the placing of the names of those candidates for Governor, or other State officials, as shown by said certificate on the official ballot as the nominees of the Democratic party for the General Election in November, 1946.

Plaintiffs further pray that in the event the Secretary of State has already prepared and distributed the official ballot for the November General election, and the election is to be held with the nname of the candidate who received the majority of county unit votes in the primary, but less than a plurality of the entire number of votes cast throughout the State, as the sole Democratic nominee for Governor entered on said official ballot, that the Secretary of State be enjoined and restrained from causing the returns of said general election for Governor to be laid befode the Senate on the day after the two houses of the General Assembly of Georgia shall have been organized.

Plaintiffs pray for all such other relief as may be necessary and proper to protect their rights as duly registered and qualied votes from being unfairly discriminated against under the said county unit law.

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EXHIBIT A (Page 1)

Section 34-3212 of the Code of Georgia of 1933, codified from Georgia laws 1917, page 183, 184, reads:

"Whenever any political party shall hold primary elections for nominations of candidates for United States Senator, Governor, Statehouse officers, Justices of the Supreme Court, and Judges of the Court of Appeals, such party or its authorities shall cause all candidates for nominations for said offices to be voted for on one and the same day throughout the State, which is hereby fixed as the second Wednesday in September of each year in which there is a regular general election. Candidates for nominations to the above-named offices who receive, respectively, the highest number of popular votes in any given county shall be considered to have carried such county, and shall be entitled to the full vote of such county on the county unit basis, that is to say, two votes for each representative to which such county is entitled in the lower House of the General Assembly. If in any county any two or more candidates shall tie for the highest number of popular votes received, the county unit vote of such county shall be equally divided between the candidates so tying. All such county unit votes shall within 10 days after such primary be accurately consolidated by the chairman and secretary of the State committee of the political party holding such primary, and published in a newspaper published at the Capital, within three days after the completition of the consolidation, certified under the hands and seals of said chairman and secretary; and the candidates for said offices, respectively, who shall receive a majority of all the county unit votes, throughout the entire state, upon the basis above set forth, shall be declared by the State convention of the party holding such primary, or the permanent chairman thereof, or other party authority, without the necessity of a formal ballot, to be the nominees of such party for the above-named offices, respectively, and it shall be the duty of the State executive committee elected or appointed at such vonvntion, or by its authority, or the chairman or secretary thereof, or other authority of such party, to see to it that the names of all such successful candidates shall be placed upon the tickets or ballots of such party at the gen-

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eral election following such primary, and such successful candidate shall be considered, deemed and held as the duly nominated candidates of such party for the offices named: Provided, that in the event there are only two candidates for any particlar office referred to in this section, and it shall appear, after the consolidation of all of the county unit votes throughout the State, that said candidates have received an equal number of county unit votes, the one who shall have received a majority of the popular votes shall be declared by the State Convention of the party holding such primary, or the permanent chairman thereof, or other party authority, without the necessity of a formal ballot, to be the nominee of such party for such office; and it shall be the duty of the State executive committee elected or appointed at such convention, or by its authority, or the chairman or secretary thereof, or other authority of such party, to see to it that the name of such successful candidate shall be placed upon the tickets or ballots of such party at the general election following such primary, and such successful candidate shall be considered, deemed and held as the duly nominated candidate of such party for the office named: Provided, further, that if no convention of such party shall be called or held, the declaration of the result shall be made in such manner as may be prescribed by the State Committee or other authority of such party. (Acts 1917, pp. 173, 184.)

Section 8 of an act of the General Assembly of Georgia, approved January 7, 1944 (Ga. Laws 1944, Ex. Sess. pp.) commonly referred to as the soldiers' voting law reads:

"In order to allow more adequate time for the participation of members of the military in elections and party primaries, the following provisions are enacted in lieu of those now provided by law:

1. All candidates for national and state offices, or the proper authorities for the political party nominating them, shall file notice of their candidacy, giving their names and the offices for which they are candidates, with the Secretary of State, at least ninety days prior to the regular election. All candidates for district and county offices either by them-

selves or by the proper authorities of the party nominating them, shall file notice of their candidacy with the Ordinary of the County at least ninety days before the regular election.

2. Whenever any political party shall hold primary elections for nomination of candidates for office for Governor, State House Officers, Members of Congress, United States Senators, Judges of the Superior Courts, Justices of the Supreme Court, Judges of the Court of Appeals, Solicitors General, and Members of the General Assembly, which are by law voted on one and the same day throughout the State, said primary may be held on such date as may be fixed by the State Executive Committee of such party, and the State Executive Committee is authorized to fix such time for the said primary, second primary, or party convention as it may determine without respect to the time now provided by law as the date on which the said primary, second primary, or convention shall be held."

Section 34-3215a of the Supplemented to the Annotated Code of Georgia, codified from Ga. Laws 1943, page 347, reads as follows:

"Immediately after the consolidation of the votes in any such primary election a certificate, showing the names of such candidates and the office for which they are candidates, shall be filed in the office of the Secretary of State of this State; such certificate to be signed by the chairman and secretary of the State Committee of the political party holding such primary. Said certificate shall show by counties the total number of popular votes and the county unit votes received by each candidate in any such primary election. (Acts 1943, p. 347.)"

Senate Bill 142 Act. No. 632
Approved Feb. 1, 1946.

AN ACT

To repeal Chapter 34-14, Section 34-1401, Section 34-1402 and Section 34-1403, relating to blank forms, tally sheets and blank lists of voters, and certificates used in the

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holding of elections in their entirety, and to repeal paragraph 7 of Section 40-601 of the Code of Georgia of 1933, relating to the duties of the Secretary of States as to furnishing forms of returns, certificates, directions and advice to the Ordinaries with reference to holding elections and for other purposes; and substitute for said paragraph 7 a new paragraph prescribing the duties of the Secretary of State with reference to furnishing all necessary forms for holding elections, and to enact a new paragraph to be known as paragraph 7a and 7b, and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1

That Chapter 34-1401, 34-1402 and 34-1403 of the Code of Georgia of 1933 prescribing certain duties upon the Governor relating to the furnishing of certain blank forms, tally sheets and blank lists of voters and certificates used in the holding of election be and the same are hereby repealed in their entirety.

Section 2

That paragraph 7 of Section 40-601 of the Code of Georgia, relating to the duties of the Secretary of State as to furnishing forms of returns, certificates, directions and advice to the Ordinaries with reference to holding elections and for other purposes, be and the same is hereby repealed in its entirety.

Section 3

That in lieu of paragraph 7 of said Section 40-601 of the Code of Georgia of 1933 a new paragraph to be known as paragraph 7 is hereby enacted to read as follows: "The Secretary of State shall furnish each Ordinary of the State the Form of official ballot, all blank forms, including tally sheets, blank lists of voters, forms of returns, certificates and directions to be used in all elections for United States Senate, Governor, Electors of President and Vice-President of the United States, Representatives to Congress, Secretary of State, State Treasurer, Comptroller General, Attorney Gen-

eral, State Superintendent of Schools, Supreme Court of Appeals, Judges of the Superior Court, Solicitor General, Public Service Commission, Commissioner of Labor, Members of the General Assembly, and County Officers. The Secretary of State shall certify to the respective Ordinaries the names of all candidates for national and state offices who have qualified as such as provided in Section 34-1904 of the Code of Georgia and in case there are one or more persons purporting to represent the same political party or candidate it shall be the duty of the Secretary of State to determine such an issue. The Ordinaries of the respective counties shall not be required to add any other names for national and state offices on the official ballot except upon certificate of the Secretary of State.

7A. In any party polling less than 150,000 votes in Georgia in the last preceding general election for President of the United States, where contest exists as to the legal Delegates to a National Convention at which a nomination of candidate for the President of the United States is to be made, it shall be the duty of the Secretary of State to determine the issue and to certify the names of the legally elected delegates to the Secretary of the National Committee of the Party interested.

7B. The Secretary of State shall provide and keep on hand a sufficient quantity of self sealing envelopes of uniform appearance and suitable size, and a sufficient quantity of any of the forms above specified for use in the elections aforesaid. He shall furnish the respective Ordinaries all of such forms as may be necessary, and they shall furnish all such forms as may be necessary to the Justices of the Peace at least five days before election day, and on failure to do so the Ordinaries shall be subject to a fine not exceeding $100.00."

Section 4

All laws and parts of laws in conflict herewith be and the same are hereby repealed.

FRANK C. GROSS,
President of the Senate

EXHIBIT A (Page 6)

MRS. HENRY W. NEVIN,
Secretary of the Senate

ROY V. HARRIS,
Speaker of the House of Representatives

P. T. McCUTCHEN, JR.,
Clerk of the House of Representatives.

APPROVED ELLIS ARNALL,
Governor

This 1st day of February, 1946.

I, John B. Wilson, Secretary of State of the State of Georgia, do hereby certify that the foregoing is a true and correct copy of Act No. 632 of the 1946 General Assembly, as the same appears on file in this office.

This 11th day of February, 1946.

JOHN B. WILSON (signed)
Secretary of State.

EXHIBIT B (Page 1)

CONSOLIDATED VOTE IN STATE DEMOCRATIC PRIMARY HELD JULY 17, 1946

County	Popular and (unit) vote for Governor			
	James V. Carmichael	Hoke O'Kelley	E. D. Rivers	Eugene Talmadge
Appling	1097	33	443	2305 (2)
Atkinson	256	39	1026 (2)	442
Bacon	277	41	693	1317 (2)
Baker	47	11	348	647 (2)
Baldwin	2790 (4)	26	579	2162
Banks	545	39	213	1280 (2)
Barrow	1667	93	286	1803 (2)
Bartow	2631 (4)	98	546	2292
Ben Hill	1268	29	256	1643 (2)
Berrien	358	20	1300 (2)	889
Bibb	12305 (6)	241	1305	8222
Bleckley	575	8	192	1794 (2)
Brantley	125	13	714 (2)	649
Brooks	914	85	600	1440 (2)
Bryan	271	12	211	1030 (2)
Bullock	2627	87	406	3253 (4)
Burke	1229	36	99	1379 (4)
Butts	1076 (2)	42	106	935
Calhoun	353	35	292	579 (2)
Camden	699 (2)	13	412	680
Candler	686	16	195	1163 (2)
Carroll	3219 (4)	154	305	2626
Catoosa	1020 (2)	20	248	577
Charlton	521 (2)	28	311	47
Chatham	17679	280	238	21308 (6)
Chattahoochee	61	1	7	196 (2)
Chattooga	2334 (2)	132	538	1503
Cherokee	1668	99	151	2666 (2)
Clarke	4521 (4)	107	811	1995
Clay	350	6	35	407 (2)
Clayton	1264	115	263	1717 (2)
Clinch	110	9	1143 (2)	437
Cobb	8274 (4)	161	348	2950
Coffee	955	75	1392	2865 (4)
Colquitt	2646	87	667	3790 (4)
Columbia	418	12	95	683 (2)
Cook	606	42	949 (2)	816
Coweta	2995 (4)	124	291	1304
Crawford	246	8	81	1049 (2)
Crisp	977	35	783	2475 (2)

EXHIBIT B (Page 2)

Popular and (Unit) Vote for Governor

County	James V. Carmichael	Hoke O'Kelley	E. D. Rivers	Eugene Talmadge
Dade	83	4	1408 (2)	75
Dawson	58	10	430	840 (2)
Decatur	1490	111	600	2207 (4)
DeKalb	17625 (6)	599	1017	7529
Dodge	1191	42	1360	3064 (2)
Dooly	1202	46	98	1417 (2)
Dougherty	4422 (4)	72	549	2380
Douglas	1355	65	139	1423 (2)
Early	990	51	418	1754 (2)
Echols	2	0	347 (2)	286
Effingham	480	32	123	1457 (2)
Elbert	1727	48	412	2205 (2)
Emanuel	1562	41	802	2987 (4)
Evans	606	45	169	1093 (2)
Fannin	969 (2)	28	123	317
Fayette	683	66	143	1249 (2)
Floyd	5117 (6)	193	1604	4253
Forsyth	1040	74	72	1417 (2)
Franklin	1284	60	687	1863 (2)
Fulton	58193 (6)	2048	3239	21070
Gilmer	853	17	58	1364 (2)
Glascock	91	9	150	904 (2)
Glynn	3925 (4)	164	929	1282
Gordon	1988 (2)	64	181	1609
Grady	1098	53	962	1611 (2)
Greene	1525 (2)	36	243	1403
Gwinnett	3126	336	413	3548 (4)
Habersham	1921 (2)	169	338	1460
Hall	4340 (4)	211	439	3748
Hancock	1287 (2)	21	67	956
Harrison	1051	66	456	1892 (2)
Harris	873	24	62	893 (2)
Hart	1172	59	423	1936 (2)
Heard	586	24	355	862 (2)
Henry	1873 (2)	112	197	1480
Houston	767	48	187	1414 (2)
Irwin	664	28	180	1370 (2)
Jackson	2087 (2)	92	435	1748
Jasper	779 (2)	30	48	749
Jeff Davis	562	26	140	1455 (2)
Jefferson	863	49	237	1872 (2)
Jenkins	898	17	90	1001 (2)

EXHIBIT B (Page 3)

	Popular and (Unit) Vote for Governor			
	James V. Carmichael	Hoke O'Kelley	E. D. Rivers	Eugene Talmadge
Johnson	459	19	650	1588 (2)
Jones	615	15	155	950 (2)
Lamar	1230 (2)	30	68	964
Lanier	47	0	1226 (2)	66
Laurens	2929	53	637	4249 (4)
Lee	154	6	66	540 (2)
Liberty	1328 (2)	11	364	720
Lincoln	125	27	190	790 (2)
Long	366	7	512	812 (2)
Lowndes	2372	127	2616 (4)	1105
Lumpkin	534	42	393	994 (2)
Macon	863	18	17	1204 (2)
Madison	478	26	770	1614 (2)
Marion	443	17	52	707 (2)
McDuffie	940	37	93	1433 (2)
McIntosh	848 (2)	12	227	514
Meriwether	2001	38	167	2018 (4)
Miller	179	11	334	1155 (2)
Mitchell	888	70	422	2261 (4)
Monroe	826	43	171	1466 (2)
Montgomery	532	20	272	1209 (2)
Morgan	1410 (2)	37	64	960
Murray	825	23	116	891 (2)
Muscogee	8691 (6)	75	323	8264
Newton	3052 (2)	136	179	2193
Oconee	790	25	113	1210 (2)
Oglethorpe	534	28	297	1544 (2)
Paulding	678	42	992	1696 (2)
Peach	963	34	55	1134 (2)
Pickens	567	57	132	1169 (2)
Pierce	343	35	677	1525 (2)
Pike	765	29	49	967 (2)
Polk	2835 (4)	118	836	2391
Pulaski	759	23	98	954 (2)
Putnam	747	27	76	881 (2)
Quitman	220	2	14	362 (2)
Rabun	1014	42	457	1113 (2)
Randolph	1020	19	63	1079 (2)
Richmond	9334 (6)	643	529	6000
Rockdale	637	44	299	741 (2)
Schley	354	10	22	290 (2)
Screven	1015	61	134	1825 (2)

EXHIBIT B (Page 4)

County	James V. Carmichael	Hoke O'Kelley	E. D. Rivers	Eugene Talmadge
	Popular and (Unit) Vote for Governor			
Seminole	733	5	202	967 (2)
Spalding	4181 (4)	130	927	2409
Stephens	1529 (2)	86	254	1293
Stewart	413	22	43	690 (2)
Sumpter	1401	80	169	1696 (4)
Talbot	551 (2)	8	51	546
Taliaferro	803 (2)	13	108	385
Tattnall	569	62	615	2550 (2)
Taylor	726	38	99	1330 (2)
Telfair	276	17	115	2775 (2)
Terrell	846	40	88	1188 (2)
Thomas	2406	148	1113	2744 (4)
Tift	1931	72	672	2295 (2)
Toombs	976	27	403	2365 (2)
Towns	128	2	386 (2)	76
Treutlen	270	19	215	1314 (2)
Troup	5091 (6)	92	540	2080
Turner	687	59	370	1490 (2)
Twiggs	616	6	152	1072 (2)
Union	648	18	116	762 (2)
Upson	2618 (4)	47	417	2149
Walker	2157 (4)	73	1034	1484
Walton	2123	149	503	2201 (2)
Ware	3197 (4)	121	1247	2468
Warren	450	23	32	879 (2)
Washington	1443	48	279	2686 (4)
Wayne	889	49	530	1692 (2)
Webster	137	12	45	594 (2)
Wheeler	689	16	72	793 (2)
White	942 (2)	36	474	867
Whitfield	2422 (4)	93	973	2010
Wilcox	347	28	816	1595 (2)
Wilkes	1323	83	282	1353 (2)
Wilkinson	275	20	534	1410 (2)
Worth	813	75	208	2208 (4)
Total Popular Vote	313,389	11,758	69,489	297,245
Total (Unit) Vote	146	0	22	242
No. Counties	44	0	10	105